IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL REVN.APPLICATION NO.249 OF 2006

Rajendrakumar R. Gawade .. ..Applicant
Versus
Pradeep Kulkarni and Ors. .. ..Respondents

Mr. J.S.Kini for applicant
Ms. Teja S.Katdare i./b Ms. Alpa Jhaveri for respondent nos.1 and 2
Mr. A.S.Rao for respondent no.5
Mr. R.Y.Mirza, APP for State

CORAM : S.C.DHARMADHIKARI,J.

DATE : 27TH NOVEMBER, 2006

P.C.:

1. Heard Shri Kini appearing for the applicant, who is the original complainant.

2. Shri Kini submits that order passed by the learned Metropolitan Magistrate, 45h Court, Kurla, Mumbai on 5th October 2005 dropping the complaint is not only contrary to the mandate of Criminal Procedure Code but is vitiated by an error apparent on the face of the record in as much as the investigation under Section 156(3) was specifically directed to be carried out by DCP, Zone-VI but it appears that while passing the impugned order the learned Judge has relied upon report submitted by ACP, Trombay Division.

That apart, he submits that when the Investigating machinery was fully satisfied with regard to the allegations contained in the complaint then what prompted it to submit the report on 29.10.2004 stating therein that there is no basis for allegations made by the applicant is not clear. He submits that such a report is forwarded to the court only because at a latter stage the applicant made a grievance against the Investigating officer and requested that Investigating Officer may also be named as an accused.

3. With the assistance of Shri Kini and Shri Rao as also Shri Mirza, I have perused the impugned order and the communication, copy of which is annexed at page 31 viz. 9.1.2004. I have also perused copy of the report dated 29.10.2004. In the report itself it has been very categorically observed that the complainant in this case had approached the office of the Charity Commissioner Bombay and the Charity Commissioner has taken note of the grievance therien. The report states that certain offences alleged under the Bombay Public Trust Act, 1950, have been taken cognizance of by the Addl. Chief Metropolitan Magistrate, 40th Court Girgaon, Mumbai and complaint bearing No.360/H/2002 is pending before him.

4. In my view, instead of entertaining this revision application and going into rival contentions, interest of justice would be subserved if the applicant who is also complainant before the Girgaon Court is granted liberty to raise all contentions as are permissible in law and point out to the said Metropolitan Magistrate that the amounts collected by way of subscription were neither accounted nor refunded but misappropriated by the concerned persons.

5. The learned Magistrate to take into consideration these grievances of the present applicant and after hearing all affected parties should proceed to pass such orders as are permissible in law. While passing such orders the Metropolitan Magistrate should not be influenced by any observations in the order dated 5.10.2005 of the Metropolitan Magistrate, 45th Court, Kurla, Mumbai. The said order as also the reports forwarded to that court does not prohibit the Girgaon Court from initiating such measures and taking such steps as are permissible in law against all concerned. All contentions of the applicant in that behalf are expressly kept open. The revision application is disposed of with liberty as above.

(S.C. Dharmadhikari, J.)